

Consent Decree Appendix A

Trustee Council Resolution relating to this Consent Decree

Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

WHEREAS, the undersigned members of the Fox River/Green Bay Natural Resource Trustee Council (“collectively the “Trustees”) acknowledge that the Trustees were informed of negotiations with potentially responsible parties regarding the releases of hazardous substances that resulted in injuries to natural resources under Federal, State, and Tribal Trusteeship at the Lower Fox River and Green Bay Site;

WHEREAS, the Trustees are aware that the negotiations have resulted in a proposed Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.);

WHEREAS, the Trustees participated in the negotiations concerning the provisions of the Consent Decree relating to natural resource damages and natural resource restoration efforts at the Site;

WHEREAS, the Trustees understand that, under the Consent Decree, Settling Defendants P. H. Glatfelter Company (“Glatfelter”) and WTM I Company (“WTM”) would each: (1) pay \$150,000 to the U.S. Department of the Interior (“DOI”) to reimburse a portion of DOI’s past natural resource damage assessment costs (collectively the \$300,000 “DOI Past Cost Payments”); and (2) pay an additional \$1,500,000 to finance natural resource restoration efforts at the Site (collectively the \$3,000,000 “NRD Commitment”);

WHEREAS; the Trustees agree to cooperate and participate, as appropriate, in the natural resource restoration efforts prescribed by Section XVI of the Consent Decree;

WHEREAS; the Trustees agree to cooperate and participate, as appropriate, in the special procedures for restoration work prescribed by Consent Decree Appendix E;

WHEREAS, the Trustees acknowledge and agree that under Paragraph 48 of the Consent Decree, a portion of the NRD Commitment may be used to fund Approved Restoration Work that would be performed by Glatfelter and/or WTM, if the Trustees jointly approve a Project Implementation Plan for such Work;

WHEREAS, the Trustees acknowledge and agree that under Paragraph 49 of the Consent Decree, the remainder of the NRD Commitment will be disbursed to a Site-specific sub-account within the DOI NRDAR Fund and will be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration efforts;

WHEREAS, the Trustees acknowledge and agree that all funds disbursed to the DOI NRDAR Fund under Paragraph 49 of the Consent Decree shall be used in a manner consistent

with the Trustees' Joint Restoration Plan, and shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources at the Site, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken;

WHEREAS, the Trustees acknowledge Subparagraph 102.a of the Consent Decree and agree that the Trustees shall recognize that Glatfelter and WTM are entitled to full credit for the NRD Commitment, applied against their liabilities for natural resource damages relating to the Site; provided, however, that the credit ultimately recognized shall take into account and shall not include the amount of any recoveries by Glatfelter and WTM of any portions of such payments from other liable persons, such as through a recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; the Trustees also acknowledge and agree that the recognized credit may take into account, as appropriate, the value of restoration projects funded by the NRD Commitment;

WHEREAS, the Trustees recognize and acknowledge that the Consent Decree does not include a covenant not to sue Glatfelter or WTM for natural resource damages, and recognize and acknowledge that the Consent Decree expressly reserves all rights against Glatfelter and WTM for liability for natural resource damages relating to the Site; and

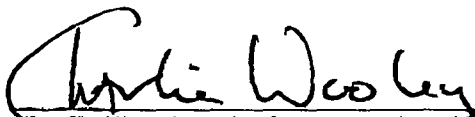
WHEREAS, the Trustees understand that Glatfelter and WTM, by entry into the Consent Decree, have not admitted any liability for natural resource damages relating to the Site.

NOW THEREFORE BE IT RESOLVED that the Trustees support the proposed Consent Decree and agree to act in accordance with the Consent Decree, as specified by this Resolution.

Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

FOR THE UNITED STATES DEPARTMENT OF THE INTERIOR



Charlie Wooley, Assistant Regional Director
U.S. Fish and Wildlife Service, Region 3
in Consultation with NOAA

DATE: 9/16/03

**Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4**

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

FOR THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES



Bruce Baker, Deputy Administrator
Water Division

DATE: 8/18/03

August 14, 2003

**Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4**

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

FOR THE MENOMINEE INDIAN TRIBE OF WISCONSIN




Gary Basaw, Vice Chair

DATE: 8-28-03

**Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4**

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

FOR THE ONEIDA TRIBE OF INDIANS OF WISCONSIN


Paul Nihham, Council Member

DATE:

Aug 22, 2003

**Fox River/Green Bay Natural Resource Trustee Council
Resolution No. 4**

Resolution Regarding the Proposed Consent Decree in United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.)

FOR THE MICHIGAN TRUSTEES

Michigan Department of Environmental Quality



William Creal

DATE: 8-18-2003

Michigan Department of Attorney General



Kathleen Cavanaugh, Assistant Attorney General

DATE: 8-18-03

Consent Decree Appendix B

Management of the Disbursement Special Account

1. Background.

a. The API/NCR Decree. Pursuant to the Consent Decree in United States and the State of Wisconsin v. Appleton Papers Inc. and NCR Corporation, Case No. 01-C-0816 (E.D. Wis.), Appleton Papers Inc. and NCR Corporation (collectively “API/NCR”) are obligated to provide the Plaintiffs up to \$10 million per year over the four-year term of that Decree (up to \$40 million in total), to be applied toward response action projects and natural resource damage restoration projects relating the Site. A separate Memorandum of Agreement among the Plaintiffs and other Inter-Governmental Partners provides that approximately one-half of the \$40 million payable under the API/NCR Decree shall be used to implement response action projects and that the remainder shall be used to implement natural resource restoration projects. Funds under that Decree can also be used as partial funding for larger projects. As set forth in detail in the API/NCR Decree, within 21 days after the Plaintiffs provide API/NCR a good faith written estimate of additional funds required for projects to be performed over the next six months, API/NCR are obligated to provide the requests funds, subject to the \$10 million annual funding limitation. Funding provided for response action projects under the API/NCR Decree can be deposited in a Site-specific Superfund Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response action projects at or in connection with the Site. As recognized by the API/NCR Decree, funds paid under that Decree can provide partial funding for projects that are also funded in part from other funding sources.

b. Plaintiffs’ Intention to Devote \$10 Million From the API/NCR Decree for Designated Response Projects in OU1. The Plaintiffs intend to devote up to \$10 million payable under the API/NCR Decree for one or more projects that will be performed as part of the OU1 Remedial Action (hereinafter “Designated Response Projects”), as permitted by the API/NCR Decree. Consistent with that intention, the Plaintiffs shall use their best efforts to have \$10 million available for funding response action projects under the API/NCR Decree deposited in the Fox River OU1 Disbursement Special Account (the “Disbursement Special Account”), so that such funds can be used for Designated Response Projects.

(1) The Plaintiffs and the Settling Defendants will jointly identify Designated Response Projects, and the Settling Defendants will assist the Plaintiffs in preparing a good faith estimate of costs required for the Projects over the next six months.

(2) The Plaintiffs will then make an appropriate request for the funds from API/NCR and will have such funds deposited in the Disbursement Special Account, as permitted by the API/NCR Decree.

(3) Allowable RD/RA Costs for Designated Response Projects shall be paid initially from the Escrow Account described by Consent Decree Paragraph 11 and Appendix C. Approximately every three months, the Escrow Account shall then be replenished pursuant to this Appendix B, through a disbursement from the Disbursement Special Account to the Escrow Account.

2. Use of the Disbursement Special Account, Generally. Any funds deposited in the Disbursement Special Account pursuant to Consent Decree Paragraph 10 shall be managed and disbursed as provided by this Appendix B. This Appendix shall not apply to any funds other than those deposited in the Disbursement Special Account pursuant to Consent Decree Paragraph 10, or to any account other than the Disbursement Special Account.

3. Special Account Disbursements to the Escrow Account. Approximately once every three months, for so long as a balance remains in the Disbursement Special Account, the Settling Defendants may request that the Escrow Account be reimbursed for Allowable RD/RA Costs already paid from the Escrow Account for Designated Response Projects. Any such request shall be made in a Quarterly Report submitted to Plaintiffs pursuant to Consent Decree Paragraph 32. Settling Defendants shall not include in any Quarterly Report costs included in a previous Quarterly Report if those costs have been previously reimbursed pursuant to this Appendix. Within 60 days of EPA's receipt of a Quarterly Report requesting reimbursement of the Escrow Account under this Paragraph, or if EPA has requested additional information under Consent Decree Subparagraph 32.c or a revised Quarterly Report under Consent Decree Subparagraph 32.d, within 60 days of receipt of the additional information or the revised Quarterly Report, and subject to the conditions set forth in this Appendix, EPA shall disburse the funds from the Disbursement Special Account to the Escrow Account as reimbursement of the Allowable RD/RA Costs for the Designated Response Projects. If the Settling Defendants fail to cure a deficiency in a Quarterly Report that has been identified by the Response Agencies within 15 business days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate the Allowable RD/RA Costs eligible for reimbursement and will disburse the corrected amount to the Escrow Account in accordance with the procedures in this Appendix. The Settling Defendants may dispute EPA's recalculation under this Paragraph pursuant to Consent Decree Section XX (Dispute Resolution). In no event shall funds be disbursed from the Disbursement Special Account in excess of amounts properly documented in a Quarterly Report accepted or modified by EPA.

4. Procedure for Special Account Disbursements to Settling Defendants. EPA shall disburse the funds from the Disbursement Special Account to the Escrow Account in accordance with written instructions that the Settling Defendants shall provide EPA after the Effective Date.

5. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Defendants: (i) have knowingly submitted a materially false or misleading Quarterly Report; (ii) have submitted a materially inaccurate or incomplete Quarterly Report, and have failed to correct the materially inaccurate or incomplete Quarterly Report within 15 business days after being notified of, and given the opportunity to cure, the deficiency; or (iii) failed to submit a Quarterly Report as required by Consent Decree Paragraph 32 within 15 business days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Appendix because of Settling Defendants' failure to submit the Quarterly Report as required by Consent Decree Paragraph 32. EPA's obligation to disburse funds from the Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Response Work pursuant to Consent Decree Paragraph 90, when such assumption of performance of the Response Work is not challenged by Settling Defendants or, if challenged, is

upheld under Consent Decree Section XX (Dispute Resolution). Settling Defendants may dispute EPA's termination of special account disbursements under Consent Decree Section XX (Dispute Resolution).

6. Recapture of Special Account Disbursements. Upon termination of disbursements from the Disbursement Special Account under Paragraph 5 of this Appendix, if EPA has previously disbursed funds from the Disbursement Special Account for activities specifically related to the reason for termination (*e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to Settling Defendants for those amounts already disbursed from the Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Defendants. Within 30 days of receipt of EPA's bill, Settling Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" referencing the name and address of the party making payment, EPA Site/Spill Identification Number A565, and DOJ Case Number 90-11-2-1045/2. Settling Defendants shall send the check(s) to:

U.S. Environmental Protection Agency, Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

At the time of payment, Settling Defendants shall send notice that payment has been made to the to DOJ and EPA in accordance with Consent Decree Section XXVIII (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

Upon receipt of payment, EPA may deposit all or any portion thereof, in the Hazardous Substance Superfund, in the Fox River OU1 Disbursement Special Account, in the Fox River Site Special Account, or in another Site-specific special account within the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of the Consent Decree or in any other forum or proceeding. Settling Defendants may dispute EPA's determination as to recapture of funds pursuant to Consent Decree Section XX (Dispute Resolution).

7. Balance of Special Account Funds. After Certification of Completion of Remedial Action by EPA pursuant to Consent Decree Subparagraph 44.b, and after EPA completes all disbursements to the Escrow Account in accordance with this Appendix, if any funds remain in the Disbursement Special Account, EPA may transfer such funds to the Hazardous Substance Superfund, to the Fox River Site Special Account, or to another Site-specific special account within the Hazardous Substance Superfund. Upon any Termination Date

under Consent Decree Paragraph 98, and after EPA completes all disbursements to the Escrow Account in accordance with this Appendix, if any funds remain in the Disbursement Special Account, EPA may transfer such funds to the Hazardous Substance Superfund, to the Fox River Site Special Account, or to another Site-specific special account within the Hazardous Substance Superfund. Any transfer of funds to the Hazardous Substance Superfund, to the Fox River Site Special Account, or to another Site-specific sub-account within the Hazardous Substance Superfund shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of the Consent Decree or in any other forum or proceeding.

Consent Decree Appendix C

Escrow Account Management

1. Escrow Account Establishment. Pursuant to Consent Decree Paragraph 11, the Settling Defendants shall establish an escrow account trust fund — to be known as the Fox River OU1 Escrow Account (the “Escrow Account”) — with a duly-chartered federally-insured bank (the “Escrow Agent”). The funds in the Escrow Account shall be held in trust for the performance of certain requirements of this Consent Decree, and the United States and the State shall be beneficiaries of the Escrow Account. The Escrow Account may be established and managed as several accounts or sub-accounts to address the different sources and uses of the funds paid into the Escrow Account.

2. Escrow Agreement Form and Requirements. The final escrow agreement shall be provided to the Plaintiffs for approval primarily to ensure that the escrowed funds will be handled in accordance with this Consent Decree. The escrow agreement shall instruct and authorize the Escrow Agent to apply, retain, or use the funds in the Escrow Account (and all interest or other income earned on funds deposited in the Escrow Account) in order to finance response actions taken or to be taken at or in connection with OU1 of the Site, but only in accordance with, and to the extent required by, the governing provisions of the Consent Decree.

3. Monthly Financial Reports. The escrow agreement shall require that the Escrow Agent prepare and submit to the Response Agencies’ Project Coordinators designated under the Consent Decree statements every month detailing money received and disbursed in the preceding month, and the balance in the Escrow Account on the date of the statement.

4. Disbursements from the Escrow Account, Generally. The Escrow Agent shall disburse certain funds from the Escrow Account to the United States and the State as payment of sums due under this Consent Decree and shall disburse certain other funds from the Escrow Account to the Settling Defendants for reimbursement of Allowable RD/RA Costs and/or Allowable Restoration Work Costs. In addition, the Settling Defendants may direct the Escrow Agent to pay Allowable RD/RA Costs directly to a contractor or subcontractor responsible for the performance of the Response Work, or to pay Allowable Restoration Work Costs directly to a contractor or subcontractor responsible for the performance of Approved Restoration Work.

5. Disbursements from the Escrow Account.

a. Disbursements shall be made from the Escrow Account only for:

(1) payment of amounts due under Consent Decree Subparagraph 53.b (Subsequent Payments and Disbursements for Natural Resource Restoration);

(2) payment or reimbursement of Allowable RD/RA Costs under Consent Decree Paragraph 12 (OU1 Remedial Design) and Consent Decree Paragraph 14 (OU1 Remedial Action);

(3) payment of Specified Future Response Costs payable to Plaintiffs under Consent Decree Paragraph 54 (Payment of Specified Future Response Costs);

(4) a payment of any or all unexpended funds remaining in the Escrow Account to the Fox River Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund, in the event EPA and/or WDNR assume performance of all or any portions of the Response Work under Consent Decree Paragraph 90 (Response Work Takeover);

(5) payment or reimbursement of Allowable Restoration Work Costs for Approved Restoration Work under Consent Decree Paragraph 48;

(6) a partial refund payment to the Settling Defendants after Certification of Completion of Remedial Action by EPA pursuant to Consent Decree Subparagraph 44.b, if requested by the Settling Defendants and approved by EPA, after a determination by EPA that the partial refund will leave a balance in the account that will be sufficient to fund the completion of the Response Work;

(7) a refund payment to the Settling Defendants of any and all unexpended funds remaining in the Escrow Account, after a determination by the Plaintiffs that all required disbursements from Escrow Account have been made, after a Termination Date under Consent Decree Paragraph 98;

(8) a refund payment of any and all unexpended funds remaining in the Escrow Account, after a determination by the Plaintiffs that all required disbursements from Escrow Account have been made, in the event the Plaintiffs withdraw or withhold consent to the Consent Decree before entry, or the Court declines to enter the Consent Decree;

(9) a final payment of any and all unexpended funds remaining in the Escrow Account, after Certification of Completion of the Response Work by EPA pursuant to Consent Decree Subparagraph 45.b, either: (i) as a final refund payment to the Settling Defendant, if a final refund payment is requested by the Settling Defendants within 180 days after Certification of Completion of the Response Work; or (ii) as a payment to the Fox River Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund, if a final refund payment is not requested by Settling Defendants within 180 days after Certification of Completion of the Response Work; and

(10) payment of fees, taxes, and expenses under Section 5.3 of the Escrow Agreement.

b. A disbursement from the Escrow Account shall only be made by the Escrow Agent after receipt of a duly executed escrow disbursement certificate in substantially the form attached hereto at Consent Decree Appendix D, Exhibit A (Form of Escrow Disbursement Certificate for Trustee-Sponsored Natural Resource Restoration Efforts), Exhibit B (Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable RD/RA Costs),

Exhibit C (Form of Escrow Disbursement Certificate for Payment of Specified Future Response Costs), Exhibit D (Form of Escrow Disbursement Certificate for Response Work Takeover), Exhibit E (Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable Restoration Costs), Exhibit F (Form of Escrow Disbursement Certificate for Refund Payment to Settling Defendants), or Exhibit G (Form of Escrow Disbursement Certificate for Final Payment to Fox River Site Special Account).

c. Copies of any escrow disbursement certificate submitted to the Escrow Agent shall be submitted to all other Parties to this Consent Decree in accordance with Consent Decree Section XXVIII (Notices and Submissions), and shall be submitted to the other Parties in the same manner and on the same day that the escrow disbursement certificate is submitted to the Escrow Agent. No disbursement from the Escrow Account shall be made in response to an escrow disbursement certificate unless: (i) at least 10 business day have elapsed since the Escrow Agent received the escrow disbursement certificate; and (ii) the Escrow Agent has not received written notice within those 10 business days that a Party to this Consent Decree objects to the requested disbursement and has invoked the dispute resolution procedures under Consent Decree Section XX (Dispute Resolution) to resolve the objection.

6. Disbursements for Natural Resource Restoration. Beyond the \$500,000 initial payment for Trustee-sponsored natural resource damage restoration efforts required by Consent Decree Subparagraph 53.a, an additional \$2,500,000 deposited in the Escrow Account shall be earmarked and dedicated for natural resource restoration relating to the Site, as the remainder of the NRD Commitment. That \$2,500,000 shall be disbursed from the Escrow Account as set forth in the following Subparagraphs: (i) for payment or reimbursement of Allowable Restoration Work Costs incurred for Approved Restoration Work to be performed by the Settling Defendants under Consent Decree Paragraph 48; and/or (ii) for payment to a Site-specific sub-account within the DOI NRDAR Fund, to finance Trustee-sponsored natural resource damage restoration efforts under Consent Decree Paragraph 49.

a. Disbursements shall be made from the Escrow Account in accordance with Consent Decree Paragraph 11 and Consent Decree Paragraph 48 for payment or reimbursement of Allowable Restoration Work Costs incurred for Approved Restoration Work to be performed by the Settling Defendants.

b. By no later than December 1, 2004, the following additional amount shall be disbursed from the Escrow Account to a Site-specific sub-account within the NRDAR Fund: \$1,250,000 less the total amount of all disbursements from the Escrow Account for Allowable Restoration Work Costs through September 30, 2004.

c. By no later than December 1, 2005, the following additional amount shall be disbursed from the Escrow Account to a Site-specific sub-account within the NRDAR Fund: \$1,250,000 less the total amount of all disbursements from the Escrow Account for Allowable Restoration Work Costs between October 1, 2004 and September 30, 2005.

7. Disbursements for Specified Future Response Costs. Except for costs under Consent Decree Section XV (Emergency Response) that are payable under Consent Decree Subparagraph 54.a.(2), all Specified Future Response Costs incurred and billed by the United States and/or the State before Certification of Completion of Remedial Action by EPA pursuant

to Consent Decree Subparagraph 44.b shall be reimbursed from the Escrow Account, to the extent that such costs are not inconsistent with the National Contingency Plan. The procedures to be used for billing and reimbursing such Specified Future Response Costs are specified by the following Subparagraphs.

a. EPA Reimbursement. On a periodic basis, the United States will send Settling Defendants a cost summary that includes an EPA cost summary, showing direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary, showing costs incurred by DOJ and its contractors, if any. At any time after the bill has been sent to the Settling Defendants, the United States may submit a duly executed escrow disbursement certificate requesting that the Escrow Agent disburse the billed amount to EPA, subject to the dispute procedures established by pursuant to Consent Decree Paragraph 68 and Section XX (Dispute Resolution) of the Consent Decree.

b. State Reimbursement. On a periodic basis, the State will send Settling Defendants a cost summary that includes a WDNR cost summary, showing direct and indirect costs incurred by WDNR and its contractors, and a WDOJ cost summary, showing costs incurred by WDOJ and its contractors, if any. At any time after the bill has been sent to the Settling Defendants, the State may submit a duly executed escrow disbursement certificate requesting that the Escrow Agent disburse the billed amount to the State, subject to the dispute procedures established by Consent Decree Paragraph 68 and Section XX (Dispute Resolution) of the Consent Decree.

8. Disbursements for the Remedial Design

a. Settling Defendant WTM I Company shall be entitled to seek disbursements from the Escrow Account for payment or reimbursement up to \$2 million in response costs incurred in performing its obligations under the July 2003 AOC and Consent Decree Paragraph 12, as Allowable RD/RA Costs. If the costs of performing the work required under the June 2003 AOC and Consent Decree Paragraph 12 exceed \$2 million, then Settling Defendant WTM I Company shall continue to perform and shall complete such work at its own expense, without additional reimbursement from the Escrow Account.

b. The Plaintiffs shall be entitled to seek disbursements from the Escrow Account for payment of all response costs incurred by Plaintiffs in overseeing the components of the Response Work performed under the July 2003 AOC and Consent Decree Paragraph 12, as Specified Future Response Costs.

Consent Decree Appendix D

FORM OF ESCROW AGREEMENT for the Fox River OU1 Escrow Account

THIS ESCROW AGREEMENT for the Fox River OU1 Escrow Account (the “Escrow Account”) is effective as of _____, _____, by and among P. H. Glatfelter Company (“Glatfelter”) and WTM I Company (“WTM”) and _____ (the “Escrow Agent”). The following parties are the beneficiaries of this Escrow Agreement and the Escrow Account established and managed hereunder (collectively the “Beneficiaries”): (i) the United States of America (the “United States”) (on behalf of the U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of the Interior (“DOI”)); and (ii) the State of Wisconsin (the “State”) (on behalf of the Wisconsin Department of Natural Resources (“WDNR”)).

WHEREAS, the United States and the State have filed an action, captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.) (the “Litigation”), pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607;

WHEREAS, the Plaintiffs’ Complaint in the Litigation seeks, inter alia: (i) reimbursement of certain response costs incurred and to be incurred by the United States and the State for response actions at Operable Unit 1 (“OU1”) of the Lower Fox River and Green Bay Site (the “Site”) in Northeastern Wisconsin, together with accrued interest; and (ii) performance of response work by the defendants at OU1 of the Site, consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended);

WHEREAS, the United States, the State, Glatfelter, and WTM have negotiated a Consent Decree in the Litigation memorializing a settlement of claims on specified terms;

WHEREAS, the appropriate natural resource trustees (the “Trustees”), as represented by the Fox River/Green Bay Natural Resource Trustee Council, participated in the negotiation of the Consent Decree, and support the Consent Decree, as indicated by the Trustee Council Resolution attached as Appendix A to the Consent Decree;

WHEREAS, the Consent Decree requires that Glatfelter and WTM establish an interest-bearing escrow account trust fund – to be known as the Fox River OU1 Escrow Account – and make specified payments into the Escrow Account as financial assurance for certain obligations under the Consent Decree, including for performance of response activities and natural resource restoration efforts;

WHEREAS, the United States and the State will benefit from the funding and performance of response activities and natural resource restoration efforts to be funded and performed under the Consent Decree;

NOW, THEREFORE, in consideration of the promises and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Establishment and Funding of Escrow Account.

The terms “Fox River OU1 Escrow Account” and “Escrow Account” shall mean escrow account established by this Escrow Agreement to receive, hold, and disburse funds to be used for payment and reimbursement of particular categories of Site-related response costs and natural resource restoration costs under the Consent Decree. The Escrow Account may be established and managed as several accounts or sub-accounts to address the different sources and uses of the funds paid into the Escrow Account. Glatfelter and WTM shall each pay a total of \$26,250,000 into the Escrow Account in accordance with the schedule specified by Consent Decree Subparagraph 50.a. In addition, EPA will use best efforts in seeking to have an additional \$10,000,000 deposited in the Escrow Account pursuant to Consent Decree Paragraph 10 and Consent Decree Appendix B. Finally, Glatfelter and WTM may elect to deposit additional funds in the Escrow Account pursuant to Consent Decree Paragraph 98.d.(ii), but they have no obligation to do so under the Consent Decree. Glatfelter and WTM hereby absolutely and irrevocably assign, convey, and transfer to the Escrow Account and its successors and assigns, for the benefit of the Beneficiaries, all funds deposited in the Escrow Account (as well as all interest and income earned on the funds deposited in the Escrow Account), subject only to certain provisions of this Escrow Agreement (namely Subsections 4.a.(2), 4.a.(5), and 4.a.(6)) and certain provisions of the Consent Decree (namely Subparagraph 14.a.(2), Subparagraph 48.c, Paragraph 51, Paragraph 113, and Consent Decree Appendix C).

Section 2. Purpose.

The purpose of the Escrow Account is to receive and hold funds in an interest-bearing account, and to disburse those funds for payment and reimbursement of particular categories of Site-related response costs and natural resource restoration costs under the Consent Decree. The Escrow Agent shall hold, invest, and reinvest all funds deposited in the Escrow Account under this Escrow Agreement and shall disburse funds only as provided by this Escrow Agreement.

Section 3. Beneficial Interest.

All funds deposited into the Escrow Account shall be held in trust for the benefit of the Beneficiaries, subject to disbursement as provided by Section 4 of this Escrow Agreement.

Section 4. Disbursements from the Escrow Account.

a. The Escrow Agent shall only make disbursements from the Escrow Account for:

(1) Payments to a Site-specific sub-account within the DOI Natural Resource Damage and Restoration Fund under the Consent Decree for Trustee-sponsored natural resource damage restoration efforts, after receipt of a duly-executed escrow disbursement

certificate in substantially the form attached hereto as Exhibit A (Form of Escrow Disbursement Certificate for Trustee-Sponsored Natural Resource Restoration Efforts);

(2) Payments to Glatfelter, to WTM, and/or to their designated contractors or subcontractors, for payment or reimbursement of Allowable RD/RA Costs under the Consent Decree, after receipt of a duly-executed escrow disbursement certificate in substantially the form attached hereto as Exhibit B (Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable RD/RA Costs);

(3) Payments to the United States and/or to the State for payment of Specified Future Response Costs under the Consent Decree, after receipt of a duly-executed escrow disbursement certificate in substantially the form attached hereto as Exhibit C (Form of Escrow Disbursement Certificate for Payment of Specified Future Response Costs);

(4) In the event EPA and/or WDNR assume performance of all or any portions of the Response Work under Consent Decree Paragraph 90 (Response Work Takeover), payment of any or all unexpended funds remaining in the Escrow Account to the Fox River Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund, after receipt of a duly-executed escrow disbursement certificate in substantially the form attached hereto as Exhibit D (Form of Escrow Disbursement Certificate for Response Work Takeover);

(5) Payments to Glatfelter, to WTM, and/or to their designated contractors or subcontractors, for payment or reimbursement of Allowable Restoration Work Costs under the Consent Decree, after receipt of a duly-executed escrow disbursement certificate in substantially the form attached hereto as Exhibit E (Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable Restoration Work Costs);

(6) Payments to Glatfelter and/or to WTM for any refund payments to the Settling Defendants under Subparagraphs 5.a.(6) through 5.a.(9).(i) of Consent Decree Appendix C, after receipt of a duly-executed escrow disbursement certificate in substantially the form attached hereto as Exhibit F (Form of Escrow Disbursement Certificate for Refund Payment to Settling Defendants);

(7) A payment of any and all unexpended funds remaining in the Escrow Account to the Fox River Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund, for any final payment under Subparagraph 5.a.(9).(ii) of Consent Decree Appendix C, after receipt of a duly executed escrow disbursement certificate in substantially the form attached hereto as Exhibit G (Form of Escrow Disbursement Certificate for Final Payment to Fox River Site Special Account); and

(8) payments of fees, taxes, and expenses under Section 5.3 of this Escrow Agreement.

b. Any Party to the Consent Decree that submits an escrow disbursement certificate to the Escrow Agent shall submit copies of the escrow disbursement certificate to all other Parties to the Consent Decree in accordance with Consent Decree Section XXVIII (Notices and Submissions) and Section 6.6 of this Escrow Agreement. The escrow disbursement certificate shall be submitted to the other Parties to the Consent Decree in the same manner and on the same day that the escrow disbursement certificate is submitted to the Escrow Agent.

c. The Escrow Agent shall not make any disbursement from the Escrow Account in response to an escrow disbursement certificate unless: (i) at least 10 business day have elapsed since the Escrow Agent received the escrow disbursement certificate; and (ii) the Escrow Agent has not received written notice within those 10 business days that a Party to the Consent Decree objects to the requested disbursement and has invoked the dispute resolution procedures under Consent Decree Section XX (Dispute Resolution) to resolve the objection.

Section 5. Escrow Agent.

Section 5.1. Duties. The Escrow Agent's obligations and duties in connection herewith are limited to those specifically enumerated in this Escrow Agreement. The Escrow Agent shall at all times hold and invest the assets of the Escrow Account in a manner designed to achieve the maximum investment return possible, but to preserve the principal of the Escrow Account. Consistent with that capital-preservation objective, the Escrow Agent shall invest and reinvest the principal and income of the Escrow Account in securities of the United States Government or an agency thereof, obligations secured or insured by the United States Government, common trust funds or money market funds investing in investment grade short-term municipal bonds or annuities purchased from insurance companies having assets greater than \$10 billion, or mutual funds investing exclusively in such securities or obligations. The Escrow Agent shall render a written statement every month identifying each financial instrument in which the Escrow Agent has invested any portion of the Escrow Account, the amount of each such investment, any change in the amount in the Escrow Account since the date of the previous statement, and all transactions entered by the Escrow Agent since the last statement (including investments, reinvestments, or disbursements) involving funds of the Escrow Account. Monthly statements shall be delivered to the persons identified in Section 6.6 below.

Section 5.2. Receipt. The Escrow Agent shall acknowledge its receipt of amounts deposited into the Escrow Account by sending written notice, within 5 business days of such receipt, to the persons identified in Section 6.6 below.

Section 5.3. Fees, Taxes, and Expenses. The Escrow Agent's fees, if any, shall be paid solely out of the Escrow Account. Interest earned on all funds in the Escrow Account shall first be applied to defray any account fees. The fees agreed to be paid are intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that if the conditions of this Escrow Agreement are not fulfilled or the

Escrow Agent renders any material service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to or justifiably intervenes in any litigation pertaining to this Escrow Agreement, to the subject matter hereto, the Escrow Agent shall be reasonably compensated out of the Escrow Account for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees, occasioned by any delay, controversy, litigation, or event. The Escrow Agent shall notify the persons identified in Section 6.6 below, in writing, of Escrow Agent's fees or expenses at least 45 days prior to the reimbursement of such extraordinary fees or expenses from the Escrow Account; in the event Glatfelter, WTM, or the Beneficiaries dispute the amount of the Escrow Agent's fees or expenses within 30 days of receipt of notice, the disputed fees or expenses shall not be paid unless all parties agree in writing. Any taxes due on interest earned on Escrow Account deposits, and any tax preparation fees, shall be paid from the Escrow Account. Glatfelter, WTM, and the Beneficiaries shall have the right to comment on any tax returns prepared on behalf of the Escrow Agent for the Escrow Account at least 30 days prior to the filing deadline.

Section 5.4. Successor Escrow Agent. The Escrow Agent shall have the right to resign as escrow agent hereunder by delivering at least 30 days' prior notice in writing to the parties identified in Section 6.6. Glatfelter, WTM, and the Beneficiaries shall have the right to remove the Escrow Agent at any time by joint written notice delivered to the Escrow Agent. If the Escrow Agent resigns or is removed, a successor escrow agent shall be appointed by mutual agreement of Glatfelter, WTM, and the Beneficiaries, and such resignation or removal shall take effect no later than the effective date of the resignation or removal of the Escrow Agent who resigns or is being removed. Any successor escrow agent at any time serving hereunder shall be entitled to all rights, powers, and indemnities granted to the Escrow Agent hereunder as if originally named herein.

Section 5.5. Liability of Escrow Agent. So long as it acts in good faith and in the exercise of its best judgment, the Escrow Agent shall not be in any manner liable or responsible for the sufficiency, correctness, genuineness, or validity of any instruments deposited with it or with reference to the form of execution thereof, or the identity, authority, or rights of any person executing or depositing same, and the Escrow Agent shall not be liable for any loss that may occur by reason of forgery, false representation, or the exercise of its discretion in any particular manner or for any other reason, except for its own negligence, gross negligence, willful misconduct, bad faith, or breach of this Escrow Agreement. Except in instances of the Escrow Agent's own negligence, gross negligence or willful misconduct, Glatfelter and WTM shall indemnify, defend, and hold the Escrow Agent harmless from any demands, suits or causes of action arising out of this Escrow Agreement.

Section 6. Miscellaneous.

Section 6.1. Binding Effect. This Escrow Agreement shall be binding upon Glatfelter, WTM, and the Escrow Agent and their respective successors and assigns.

Section 6.2. Severability. If any section of this Escrow Agreement, or portion thereof, shall be adjudged illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect the legality, validity, or enforceability of this Escrow Agreement, as a whole, or of any other section or portion thereof not so adjudged.

Section 6.3. Effective Date. This Escrow Agreement shall become effective upon the execution of this Escrow Agreement by Glatfelter, WTM, and the Escrow Agent.

Section 6.4. Governing Law. This Escrow Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wisconsin.

Section 6.5. Interpretation. As used in this Escrow Agreement, words in the singular include the plural and words in the plural include the singular; the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement.

Section 6.6. Notices. Any notice, request, instruction, or other document to be given hereunder by a party hereto or by any or all of the Beneficiaries shall be in writing, shall be given to all other parties hereunder and to the Beneficiaries, and shall be deemed to have been given: (i) when received if given in person, (ii) on the date of transmission if sent by confirmed telex, facsimile, or other wire transmission, or (iii) four business days after being deposited in the United States mail postage prepaid:

If to the Beneficiaries, addressed as follows:

[Name, address, facsimile, and e-mail]

and

[Name, address, facsimile, and e-mail]

If to Glatfelter and WTM, addressed as follows:

[Name, address, facsimile, and e-mail]

and

[Name, address, facsimile, and e-mail]

If to the Escrow Agent, addressed as follows:

[Name, address, facsimile, and e-mail]

or to such other individual or address as a party hereto or the Beneficiaries may designate for itself by notice given as herein provided.

Section 6.7. No Limitation. The parties hereto agree that the rights and remedies of the parties hereunder shall not operate to limit any other rights and remedies otherwise available to the parties.

Section 6.8. Counterparts. This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Section 6.9. Modification. This Escrow Agreement may be modified only by a written instrument signed by each of the parties hereto, and approved in writing by the Beneficiaries.

Section 6.10. Termination. If not sooner terminated pursuant to the terms hereof, this Escrow Agreement shall terminate upon disbursement of all of the funds held in the Escrow Account, and may be terminated prior to that date by written mutual consent signed by Glatfelter, WTM, and the Beneficiaries.

IN WITNESS WHEREOF, the parties hereto have executed their Escrow Agreement as of the date first written above.

P. H. Glatfelter Company

By: _____

Its: _____

WTM I Company

By: _____

Its: _____

By: _____

Its: _____

**EXHIBIT A TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for
Trustee-Sponsored Natural Resource Restoration Efforts**

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(1)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company, WTM I Company, and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

DOI and WDNR hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(1) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for Trustee-sponsored natural resource restoration efforts under Consent Decree Paragraph 49.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse \$ _____ to the Fox River Site Account within DOI's Natural Resource Damage Assessment and Restoration Fund. The disbursement should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that Glatfelter and/or WTM dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes DOI Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

Assistant Regional Director
U.S. Fish and Wildlife Service, Region 3

and

Deputy Administrator, Division of Water
Wisconsin Department of Natural Resources

DATE: _____

DATE: _____

EXHIBIT B TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable RD/RA Costs

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(2)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

Glatfelter and WTM hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(2) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for payment or reimbursement of Allowable RD/RA Costs under the Consent Decree.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse the amounts specified below to Glatfelter, to WTM, and/or to their designated contractors or subcontractors, as specified below:

Disburse \$ _____ to _____.

Disburse \$ _____ to _____.

The disbursements should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that the United States and/or the State dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes Glatfelter/WTM Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

[_____]
For P. H. Glatfelter Company

and

[_____]
For WTM I Company

DATE: _____

DATE: _____

EXHIBIT C TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Payment of Specified Future Response Costs

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(3)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

The party submitting this Certificate hereby certifies as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(3) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for payment of Specified Future Response Costs under the Consent Decree.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse the amount specified below to EPA or to WDNR, as specified below:

— **Disburse \$ _____ to the Fox River Site Special Account within the EPA Hazardous Substance Superfund.** This Certificate constitutes EPA Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

— **Disburse \$ _____ to the WDNR.** This Certificate constitutes WDNR Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

The disbursement should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that Glatfelter and/or WTM dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

BY:

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

or

Deputy Administrator, Division of Water
Wisconsin Department of Natural Resources

DATE: _____

DATE: _____

EXHIBIT D TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Response Work Takeover

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(4)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

EPA hereby certifies as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(4) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought because EPA and/or the State have assumed performance of all or any portions of the Response Work under Consent Decree Paragraph 90 (Response Work Takeover).

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse \$ _____ from the Escrow Account to the Fox River Site Special Account within the EPA Hazardous Substance Superfund. The disbursement should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that Glatfelter and/or WTM dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes EPA Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

DATE: _____

EXHIBIT E TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Payment or Reimbursement of Allowable Restoration Work Costs

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(5)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

Glatfelter and WTM hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(5) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for payment or reimbursement of Allowable Restoration Work Costs under the Consent Decree.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse the amounts specified below to Glatfelter, to WTM, and/or to their designated contractors or subcontractors, as specified below:

Disburse \$ _____ to _____.

Disburse \$ _____ to _____.

The disbursements should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that the United States and/or the State dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes Glatfelter/WTM Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

[_____]
For P. H. Glatfelter Company

and

[_____]
For WTM I Company

DATE: _____

DATE: _____

EXHIBIT F TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Refund Payments to Settling Defendants

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(6)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

Glatfelter and WTM hereby certify as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(6) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for a refund payment of some or all funds remaining in the Escrow Account, as permitted by the Consent Decree.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse the amounts specified below to Glatfelter and/or to WTM, as specified below:

___ Disburse \$ _____ to Glatfelter and disburse \$ _____ to WTM as partial refund payments under Subparagraph 5.a.(6) of Consent Decree Appendix C; or

___ Disburse \$ _____ to Glatfelter and disburse \$ _____ to WTM as refund payments under Subparagraph 5.a.(7), 5.a.(8), or 5.a.(9).(i) of Consent Decree Appendix C.

The disbursements should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that the United States and/or the State dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes Glatfelter/WTM Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

[_____]
For P. H. Glatfelter Company
DATE: _____

and

[_____]
For WTM I Company
DATE: _____

EXHIBIT G TO ESCROW AGREEMENT: Form of Escrow Disbursement Certificate for Final Payment to Fox River Site Special Account

ESCROW DISBURSEMENT CERTIFICATE
UNDER ESCROW AGREEMENT SUBSECTION 4.a.(7)

Reference is made to that certain Escrow Agreement for the Fox River OU1 Escrow Account (the "Escrow Account"), dated _____, by and among P. H. Glatfelter Company ("Glatfelter"), WTM I Company (WTM"), and _____ (the "Escrow Agent"), with the following beneficiaries (collectively the "Beneficiaries"): (i) the United States of America (the "United States") (on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI")); and (ii) the State of Wisconsin (the "State") (on behalf of the Wisconsin Department of Natural Resources ("WDNR")).

EPA hereby certifies as follows:

This Escrow Disbursement Certificate is submitted pursuant to Subsection 4.a.(7) of the Escrow Agreement and Appendix C of the Consent Decree in the case captioned United States and the State of Wisconsin v. P. H. Glatfelter Company and WTM I Company (E.D. Wis.). This disbursement is sought for payment of Specified Future Response Costs under the Consent Decree.

No sooner than 10 business days after your receipt of this Certificate, you are instructed to disburse any and all funds unexpended remaining in the Escrow Account to the Fox River Site Special Account within the EPA Hazardous Substance Superfund. The disbursement should be made in accordance with the payment instructions attached hereto.

You are instructed not to disburse any funds pursuant to this Certificate if you receive written notice within 10 business days of your receipt of this Certificate that Glatfelter and/or WTM dispute the disbursement request contained in this Certificate, as provided by Escrow Agreement Subsection 4.c and Consent Decree Section XX (Dispute Resolution).

This Certificate constitutes EPA Disbursement Certificate No. _____ (with a separate sequential number to be assigned to each separate Certificate).

BY:

Director, Superfund Division, Region 5
U.S. Environmental Protection Agency

DATE: _____

Consent Decree Appendix E

Special Procedures for Restoration Work

1. Claims of a Force Majeure Event and Disputes Relating to Approved Restoration Work and Allowable Restoration Work Costs. Claims of a Force Majeure Event and any disputes relating to Approved Restoration Work and Allowable Restoration Work Costs shall be resolved in accordance with this Appendix E. The Plaintiffs shall consult with the other members of the Trustee Council in taking and advancing positions and in making decisions under this Appendix E.

2. Force Majeure Events for Restoration Work

a. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree to perform Approved Restoration Work, whether or not caused by a Force Majeure Event, the Settling Defendants shall notify the Plaintiffs in writing within 10 working days of when Settling Defendants first knew that the event might cause a delay. The Settling Defendants' written notice shall include an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the Settling Defendants' rationale for attributing such delay to a Force Majeure Event if they intend to assert such a claim. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure Event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of a Force Majeure Event for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

b. If the Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure Event will be extended by the Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure Event, the Plaintiffs will notify the Settling Defendants in writing of their decision. If the Plaintiffs agree that the delay is attributable to a Force Majeure Event, the Plaintiffs will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure Event.

c. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Paragraph 3 (Dispute Resolution for Restoration Work) of this Appendix, they shall do so no later than 15 days after receipt of the Plaintiffs' notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure Event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants

complied with the requirements of the preceding Subparagraphs. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to the Plaintiffs and the Court.

3. Dispute Resolution for Restoration Work.

a. Informal Dispute Resolution. Any dispute under this Paragraph shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

b. Formal Dispute Resolution. In the event that the parties cannot resolve any dispute under this Paragraph by informal negotiations under the preceding Subparagraph, the formal dispute procedures outlined by this Subparagraph shall apply.

(1) The position advanced by the Plaintiffs shall be considered binding unless, within fifteen working days after the conclusion of the informal negotiation period, the Settling Defendants invoke formal dispute resolution procedures by serving on the Plaintiffs, in accordance with Section XXVIII (Notices and Submissions), a written Statement of Position on the matter in dispute which shall include or attach any factual data, analysis, opinion or documentation that the Settling Defendants rely upon in support of their position.

(2) Following receipt of Settling Defendants' Statement of Position, the Plaintiffs will issue an administrative decision resolving the dispute which shall include or attach any factual data, analysis, opinion, or documentation supporting the decision. The Plaintiffs shall compile and maintain an administrative record of the dispute containing the Settling Defendants' Statement of Position and the Plaintiffs administrative decision. The Plaintiffs' administrative decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the Plaintiffs' administrative decision, based on the administrative record compiled and maintained by the Plaintiffs. Any such motion filed by the Settling Defendants' shall setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The Plaintiffs shall provide the Court a copy of the administrative record of the dispute, and may file a response to Settling Defendants' motion.

c. Effect of Invoking Dispute Resolution. The invocation of dispute resolution procedures under this Paragraph shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless the Plaintiffs agree otherwise or unless the Court determines otherwise. Stipulated damages with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Consent Decree Paragraph 79 (Penalty Accrual During Dispute Resolution). In the event that the Settling Defendants do not prevail on the disputed issue, stipulated damages shall be assessed and paid as provided in Consent Decree Section XXI (Stipulated Penalties and Stipulated Damages).

Consent Decree Appendix F

**Administrative Order on Consent between WTM I Company, EPA, and WDNR, captioned
In the matter of the Lower Fox River and the Green Bay Site, Docket No. V-W-'03-C-745
(including the Statement of Work for Remedial Design)**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON
	)	CONSENT
)	
Lower Fox River and Green	)	U.S. EPA Region 5
Bay Site	)	CERCLA Docket No. V-W- '03-C-745
)	
Respondent:	)	Proceedings Under Sections 104, 106,
	)	122(a), and 122(d)(3) of the
	)	Comprehensive Environmental Response,
WTM I Company	)	Compensation, and Liability Act, as
	)	Amended, 42 U.S.C. §§ 9604, 9606,
(f/k/a Wisconsin Tissue Mills Inc.)	)	9622(a), and 9622(d)(3).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Consent Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the State of Wisconsin ("State") through the Wisconsin Department of Natural Resources ("WDNR"), and WTM I Company ("Respondent"). The mutual objectives of EPA, WDNR, and Respondent in entering into this Consent Order are: (i) to have Respondent perform the Pre-design Sampling for Operable Unit 1 ("OU1") of the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site) ("Site"), located in the State of Wisconsin; and (ii) to have the Respondent perform all other Remedial Design activities needed for implementation of the Response Agencies' (EPA and WDNR) December 2002 selected remedy (and/or contingent remedy, as necessary) for OU1 at the Site.

2. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9622(a), and 9622(d)(3), as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to EPA Regional Administrators as of January 16, 2002, by EPA Delegation Nos. 14-1 and 14-2, and to the Director, Superfund Division, EPA Region 5, by Regional Delegation Nos. 14-1 and 14-2.

3. The activities conducted pursuant to this Consent Order are subject to approval by EPA and WDNR, as provided herein, and shall be consistent with CERCLA, the National Contingency Plan, 40 C.F.R. Part 300, and all other applicable laws.

4. EPA, WDNR, and Respondent recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this

Consent Order do not constitute an admission of any liability. Nothing in this Consent Order is intended by the Parties to be, nor shall it be construed as, an admission of fact or law, an estoppel, or a waiver of defenses or claims by Respondent for any purpose. The Parties agree that the provisions of this Consent Order are not based on any views or assumptions regarding Respondent's appropriate share of liability or costs relating to the Site. Participation in this Consent Order by Respondent is not intended by the Parties to be, and shall not be, an admission of any fact or opinion developed by EPA, the State, or any other person or entity.

5. Respondent agrees to comply with and be bound by the terms of this Consent Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region 5 and the Secretary of the Wisconsin Department of Natural Resources or their delegates to issue or enforce this Consent Order, and also agrees not to contest the basis or validity of this Consent Order or its terms in any action to enforce its provisions. The Respondent does not, by signing this Consent Order, waive any rights it may have to assert claims under CERCLA against any person, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), except as precluded by Section XXI (Other Claims).

II. PARTIES BOUND

6. This Consent Order applies to and is binding upon and inures to the benefit of EPA, WDNR, Respondent, and their successors and assigns. Respondent agrees to instruct its officers, directors, employees and agents involved in the performance of the Work required by this Consent Order to take all necessary steps to accomplish the performance of said Work in accordance with this Consent Order. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Consent Order. Respondent shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. The signatories to this Consent Order certify that they are authorized to execute and legally bind the Parties they represent to this Consent Order.

7. Respondent shall provide a copy of this Consent Order to all contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Consent Order.

III. DEFINITIONS

8. Unless otherwise specified, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Order or in the attachments hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.
- b. "Consent Order" shall mean this Administrative Order on Consent and all attachments hereto. In the event of conflict between this Consent Order and any attachment, this Consent Order shall control.
- c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "Effective Date" shall mean the effective date of this Consent Order as provided by Section XXVI of this Consent Order (Effective Date).
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur after the Effective Date in reviewing or developing plans, reports and other items pursuant to this Consent Order, in verifying the Work, or in otherwise implementing, overseeing, or enforcing this Consent Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XIV (including, but not limited to, the cost of attorney time and any monies paid to secure access including, but not limited to, the amount of just compensation) and Paragraph 71 of Section XIX.
- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- i. "Operable Unit 1" or "OU1" shall mean the Little Lake Butte des Morts reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in December 2002. More specifically, OU1 is the portion of the Lower Fox River (and the underlying River sediment) starting at the outlet of Lake Winnebago at the Neenah Dam and the Menasha Dam downstream to the Upper Appleton Dam, including sediment deposits A through H and POG. As so defined, OU1 is depicted in Figure 7-9 of the December 2002 Final Feasibility Study, a copy of which is attached hereto as Attachment B.

j. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

k. "Parties" shall mean all signatories to this Consent Order.

l. "Record of Decision" or "ROD" for purposes of this Consent Order shall mean the WDNR/EPA Record of Decision relating to the Remedial Action planned for Operable Units 1 and 2 of the Site, signed on December 18, 2002, by the WDNR and on December 20, 2002 by the Superfund Division Director, EPA Region 5, and all attachments.

m. "Remedial Design" or "RD" shall mean those activities, including pre-design sampling, investigations, and analyses, preparation of the basis for design report, preliminary and final plans and specifications, and bid documents for the Remedial Action for Operable Unit 1 pursuant to the Record of Decision, the Statement of Work, the Pre-design Sampling Plan, and the Remedial Design Work Plan (the documents submitted by Respondent pursuant to Section IX of this Consent Order (Work to be Performed)).

n. "Respondent" shall mean WTM I Company.

o. "Response Agencies" shall mean the United States Environmental Protection Agency (EPA) and the Wisconsin Department of Natural Resources (WDNR).

p. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

q. "Site" shall mean the Lower Fox River and Green Bay Site (also known as the Fox River NRDA PCB Releases Site), or any relevant portion thereof.

r. "State" shall mean the State of Wisconsin, including its departments, agencies, and instrumentalities.

s. "Statement of Work" or "SOW" shall mean the statement of work for implementation of Remedial Design as set forth in Attachment A to this Consent Order and any modifications made in accordance with this Consent Order.

t. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

u. "WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State of Wisconsin.

v. "Work" shall mean all activities Respondent is required to perform under this Consent Order, except those required by Section XXIV (Record Preservation).

IV. STATEMENT OF PURPOSE

9. The mutual objective of EPA, WDNR and Respondent in entering into this Consent Order is to protect human health, welfare and the environment at Operable Unit 1 by producing a Remedial Design for remedial action in accordance with this Consent Order.

10. The activities conducted pursuant to this Consent Order are subject to approval by the Response Agencies. Respondent shall employ sound scientific, engineering, and construction practices and all activities undertaken shall be consistent with CERCLA, the NCP, and other applicable laws.

V. FINDINGS OF FACT

11. Based on available information, including the Administrative Record in this matter, EPA and WDNR hereby find that:

a. At certain times in the past, primarily in the 1950's and 1960's, certain paper companies located along the Fox River engaged in the manufacture or recycling of carbonless copy paper. Polychlorinated biphenyls (PCBs), which are hazardous substances, were used in the production of carbonless copy paper and were contained in wastepaper that entered the paper recycling operations.

b. As a result of the paper mills' production or recycling of carbonless copy paper an estimated 690,000 pounds of PCBs were likely released to the Fox River. An estimated 66,000 pounds of these PCBs remain in the lower 39 miles of the Fox River.

c. As a result of this contamination, fish consumption advisories have been in effect on the Fox River and Green Bay since 1976.

d. A Remedial Investigation and Feasibility Study (RI/FS) under the technical lead of WDNR, and a proposed remedial action plan, was issued for public comment on October 5, 2001.

e. On January 7, 2003, the Response Agencies made public a Record of Decision for Operable Units 1 and 2 of the Site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the Administrative Record, EPA and WDNR have determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Respondent's former Menasha paper mill is also a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent WTM I Company is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as: (i) the "owner" or "operator" of a facility at the time of disposal of a hazardous substance there; and/or (ii) as a person who arranged for disposal or transport for disposal of a hazardous substance at a facility from which there was a release of a hazardous substance.

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

f. The conditions present at the Site may present a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Contingency Plan, as amended, 40 C.F.R. § 300.415(b)(2).

g. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The response actions required by this Consent Order are necessary to protect the public health, welfare, or the environment and if carried out in compliance with the terms of this Consent Order, shall be deemed necessary and consistent with the NCP.

VII. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Consent Order. Respondent shall promptly and properly take appropriate response action at Operable Unit 1 of the Site by conducting a Remedial Design.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

14. Selection of Contractors, Personnel. All Work performed by Respondent pursuant to this Consent Order shall be under the direction and supervision of qualified personnel. Within forty-five (45) days of the Effective Date of this Consent Order, and before the Work outlined below begins, Respondent shall notify the Response Agencies in writing of the names, titles, and qualifications of the key personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, the Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The qualifications of the key personnel

undertaking the work for Respondent shall be subject to the Response Agencies' review, for verification that such persons meet minimum technical background and experience requirements. This Consent Order is contingent on Respondent's demonstration to the Response Agencies' satisfaction that Respondent's personnel are qualified to perform properly and promptly the actions set forth in this Consent Order.

15. If EPA or WDNR disapprove in writing of any contractor proposed by Respondent, Respondent shall notify the Response Agencies of the identity and qualifications of the replacement within thirty (30) days of the written notice. If EPA or WDNR subsequently disapprove of the replacement, EPA reserves the right to terminate this Consent Order and to conduct a complete Remedial Design, and to seek reimbursement for costs and penalties from Respondent. During the course of the Remedial Design, Respondent shall notify the Response Agencies in writing of any changes or additions in the key personnel used to carry out such work, providing their names, titles, and qualifications. The Response Agencies shall have the same right to approve changes and additions to key personnel as they have hereunder regarding the initial notification. Replacement of any of Respondent's personnel shall not delay performance of the work under this Consent Order.

16. On or before the Effective Date of this Consent Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all Respondent's response actions required by the Consent Order. Respondent shall submit to the Response Agencies the designated Project Coordinator's name, address, telephone number, and qualifications. EPA and WDNR retain the right to disapprove of any Project Coordinator named by Respondent. If either Response Agency disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the Response Agencies of that person's name and qualifications within seven (7) business days of the Response Agency's disapproval.

17. Receipt by Respondent's Project Coordinator of any notice or communication from the Response Agencies relating to this Consent Order shall constitute receipt by Respondent. To the maximum extent possible, communications between the Respondent and the Response Agencies shall be directed to the Project Coordinators by mail, with copies to such other persons as EPA, the State, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Consent Order.

18. Respondent's Project Coordinator, or his/her designee, shall be on-site during all hours of work when field work is ongoing in Operable Unit 1, and shall be available at all reasonable times throughout the pendency of this Consent Order. If Respondent or its agents become aware of any conditions at Operable Unit 1 which may present an imminent and substantial endangerment to human health or welfare or the environment, it shall immediately notify the EPA and WDNR Project Coordinators. The absence of the EPA Project Coordinator and/or the WDNR Project Coordinator from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work, unless specifically directed by the EPA Project Coordinator in consultation with the WDNR Project Coordinator.

19. The EPA Project Coordinator shall be responsible for overseeing the implementation of this Consent Order, in consultation with the WDNR Project Coordinator.

EPA has designated James Hahnenberg (SR-6J) as the EPA Project Coordinator. The EPA Project Coordinator shall have the same authority as that vested in an On-Scene Coordinator and Remedial Project Manager by the NCP, including the authority to halt, conduct, or direct any response action required by this Consent Order, or to direct any other response action undertaken by EPA or Respondent at the Site. Except as otherwise provided in this Consent Order, Respondent shall direct all submissions required by this Consent Order to the EPA Project Coordinator in accordance with Section XXV (Notices and Submissions).

20. The State designates Gregory Hill as the WDNR Project Coordinator. Except as otherwise provided in this Consent Order, Respondent shall direct all submissions required by this Consent Order to the WDNR Project Coordinator in accordance with Section XXV (Notices and Submissions).

21. The Response Agencies and Respondent shall have the right to change their respective designated Project Coordinator. The Response Agencies shall notify Respondent, and Respondent shall notify the Response Agencies, as early as possible before such a change is made, but in no case less than twenty-four (24) hours before such a change. The initial notification may be made orally, but it shall be promptly followed by a written notice.

IX. WORK TO BE PERFORMED

22. Activities. Respondent shall conduct activities and submit deliverables as provided by the SOW (Attachment A) for performance of the RD, which is incorporated by reference. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance referenced in the SOW, as may be amended or modified by the Response Agencies. The tasks that Respondent must perform are described in the SOW and guidance. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the work plan and sampling and analysis plan, as initially approved or modified by the Response Agencies, and as may be amended or modified by the Response Agencies from time to time.

23. Respondent's compliance with the Work requirements shall not foreclose the Response Agencies from seeking compliance with all terms and conditions of this Consent Order.

24. To the extent that EPA informs Respondent that particular information is confidential, Respondent and its representatives and consultants shall treat and maintain such information as confidential.

25. Additional Work. In the event EPA, WDNR or the Respondent determine that additional work, not otherwise included in the SOW, including remedial investigatory work and engineering evaluation, is necessary to accomplish the objectives of this Consent Order, notification of additional work shall be provided to all Parties.

26. Additional work determined to be necessary by Respondent shall be subject to the written approval of the Response Agencies.

27. Additional work determined to be necessary by Respondent and approved by the Response Agencies, or determined to be necessary by EPA or WDNR and requested of Respondent, shall be completed by Respondent in accordance with the standards and specifications determined or approved by the Response Agencies. Respondent shall propose a schedule for additional work for approval by the Response Agencies. The Response Agencies may jointly modify or determine the schedule for additional work. Additional work shall be performed in a manner consistent with the purposes and objectives of this Consent Order, and conform with the requirements of this Section.

28. Supplemental Investigations. The Parties acknowledge that Respondent may implement a voluntary, supplemental, investigation of conditions in and upstream of Operable Unit 1. These investigations shall be conducted using methods consistent with those identified in the Pre-design Sampling Plan. The Response Agencies agree to review and comment promptly on work generated by Respondent during such supplemental investigation activities.

29. Out-of-State Shipments. In the event of out-of-state shipments of hazardous substances, Respondent shall provide written notification to the Response Agencies and the appropriate environmental official of the state receiving hazardous substances prior to shipment of hazardous substances in quantities greater than ten (10) cubic yards from the Site to an out-of-state location. The notification shall include:

- a. The name and location of the facility receiving the hazardous substances;
- b. The type and quantity of the hazardous substances, including the Department of Transportation shipping code, if any;
- c. The schedule for shipment of the hazardous substances;
- d. The method of transportation; and
- e. Any special procedures necessary to respond to an accidental release of the substances during transportation.

Respondent shall promptly notify the Response Agencies and the appropriate environmental official for the receiving state of any changes to the shipment plan.

X. PLANS AND SUBMISSIONS

30. Respondent shall submit the Pre-design Sampling Plan for OU1, Remedial Design Work Plan ("RD Work Plan") and all documents required by the SOW, the RD Work Plan, or this Consent Order to the Response Agencies according to the schedule contained in the SOW and RD Work Plan, and when feasible shall submit both a hard copy and an electronic copy of such documents.

31. The Response Agencies shall review all documents specified as requiring approval in the SOW, RD Work Plan, or this Consent Order. The Response Agencies shall respond to each submission in writing with a single integrated response. As a result of their review of a submission, the Response Agencies may: (a) approve the submission; (b) approve

the submission with minor modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating the Response Agencies' comments; or (d) if a re-submission, disapprove the re-submission and the Response Agencies may assume responsibility for performing all or any part of the response action.

32. In the event of approval or approval with minor modifications by the Response Agencies, Respondent shall proceed to take any action required by the submittal, as approved or modified by the Response Agencies.

33. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such longer time as specified by the Response Agencies in their notice of disapproval, correct the deficiencies and resubmit the submittal for approval. Notwithstanding the notice of disapproval, Respondent shall proceed, if so directed by the Response Agencies, to take any action required by any non-deficient portion of the submission that remains unaffected by the notice of disapproval and can be reasonably implemented in the interim.

34. If any re-submission is not approved by the Response Agencies, they may determine that Respondent is in violation of this Consent Order, unless Respondent invokes the procedures set forth in Section XV (Dispute Resolution) and the Response Agencies' determination is revised pursuant to that Section. Issues previously resolved pursuant to the procedures set forth in Section XV may not be re-disputed.

35. Neither failure of the Response Agencies to expressly approve or disapprove of Respondent's document within the specified time period nor the absence of comments shall be construed as approval of the document. In the event of subsequent disapproval of a revised document, the Response Agencies retain the right to terminate this Consent Order and perform additional studies or conduct a complete or partial Remedial Design.

36. For any document required to be submitted by the Respondent to the Response Agencies, within forty-five (45) days of receipt of the document, the Response Agencies shall provide written notification to Respondent of their approval, approval with minor modifications or disapproval, of the submission or any part thereof. If the Response Agencies require a longer review period, the Response Agencies shall so notify Respondent within thirty (30) days of receipt of the submitted document.

37. The Project Coordinators shall hold progress report meetings / telephone conferences twice a month unless such a meeting is deemed unnecessary by the Response Agencies. By mutual agreement the Project Coordinators may hold meetings or telephone conferences at more frequent intervals.

38. Respondent shall provide written monthly progress reports to the Response Agencies. These monthly progress reports shall include the following information:

- a. A description of the actions which have been taken to comply with this Consent Order during the past month and work planned for the coming month;

- b. All results of sampling and tests, including raw data and validated data, and all other investigation results received by the Respondent during the month, in the format prescribed by the Response Agencies;
- c. Target and actual completion dates of each element of the RD, including project completion, with schedules relating such work to the overall project schedule for RD completion, and an explanation of any schedule deviation or anticipated deviation from the RD Work Plan schedule, and proposed method of mitigating such deviation;
- d. A description of all problems encountered and any anticipated problems during the reporting period, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and,
- e. Changes in key personnel.

39. Respondent shall submit the monthly progress reports, as both electronic files and hard copy files, to the Response Agencies by the tenth (10th) day of every month following the Effective Date of this Consent Order.

XI. QUALITY ASSURANCE AND DATA AVAILABILITY

40. Quality Assurance. Respondent shall consult with the Response Agencies' Project Coordinators in planning all sampling and analysis detailed in the Pre-design Sampling Plan and RD Work Plan. Respondent shall assure that work performed, samples taken and analyses conducted conform to the requirements of the SOW, the Quality Assurance Project Plan ("QAPP") and guidance identified therein.

41. Respondent shall prepare preliminary and final QAPPs for submittal to EPA according to the schedule in the SOW. Respondent shall participate in a pre-QAPP meeting with EPA prior to submission of the preliminary QAPP to discuss its contents.

42. The QAPPs shall be subject to review, modification, and approval by EPA in accordance with Section X (Plans and Reports).

43. Data Availability. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, pursuant to this Consent Order, shall be submitted in the format prescribed by the Response Agencies and made available to and submitted to the Response Agencies in the monthly progress reports described in Section X of this Consent Order. The Response Agencies will make available to Respondent validated data generated by the Response Agencies relating to Lake Winnebago and OU1 unless it is exempt from disclosure by any federal or state law or regulation.

44. Respondent will verbally notify the Response Agencies at least fifteen (15) days prior to conducting significant field events (including any sampling, tests and other data generation) as described in the SOW, Pre-design Sampling Plan, or RD Work Plan or conducted under any other provision in this Consent Order. Respondent shall allow split or duplicate

samples to be taken by the Response Agencies (and their authorized representatives) of any samples collected by the Respondent in implementing this Consent Order. All split samples of Respondent's shall be analyzed by the methods identified in the EPA-approved QAPP.

45. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to the Response Agencies pursuant to the terms of this Consent Order under 40 C.F.R. § 2.203, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to the Response Agencies, it may be made available to the public by EPA or the State without further notice to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Operable Unit 1 conditions, sampling, or monitoring.

46. In entering into this Consent Order, Respondent waives any objections to the quality of any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Consent Order or any Work Plan approved by the Response Agencies. If Respondent objects to any data relating to the RD, Respondent shall submit to the Response Agencies a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to the Response Agencies within thirty (30) days of the monthly progress report or such other report as may contain the data.

47. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or the work product doctrine. If Respondent asserts such a privilege, in lieu of providing documents, it shall inform the Response Agencies that it is claiming certain documents as privileged and shall, upon request, provide the Response Agencies with the following:

- a. The title of the document;
- b. The date of the document, record, or information;
- c. The name and title of the author of the document, record, or information;
- d. The name and title of each addressee and recipient;
- e. A description of the contents of the document, record, or information; and
- f. The privilege asserted by the Respondent.

48. Failure to challenge Respondent's assertion of privilege by EPA or WDNR during the implementation of the RD does not waive the Response Agencies' right to challenge the assertion during the implementation of the Remedial Action.

XII. ACCESS

49. To the extent that Operable Unit 1 or other on-site and off-site areas where work is to be performed is presently owned by parties other than Respondent, Respondent shall obtain, or use its best efforts to obtain, access agreements from the present owners within sixty (60) days of approval of the RD Work Plan. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Access agreements shall provide access for the Response Agencies and all authorized representatives of the Response Agencies. Respondent shall immediately notify the Response Agencies if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. The Response Agencies may then assist Respondent in gaining access, to the extent necessary to effectuate the activities required by this Consent Order, using such means as the Response Agencies deem appropriate. All costs incurred, direct or indirect, by the United States or the State in obtaining such access including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation shall be considered Future Response Costs. In accordance with Paragraph 53 (Liability for Future Response Costs), Respondent may be required to reimburse the United States and the State for all such Future Response Costs.

50. At all reasonable times the Response Agencies and their authorized representatives shall have the authority to enter and freely move about all property owned by Respondent at Operable Unit 1 and at any other on-site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to Operable Unit 1 pursuant to this Consent Order; reviewing Respondent's progress in carrying out the terms of this Consent Order; conducting tests as the Response Agencies or their authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment for purposes of documenting the Work; and verifying the data submitted to the Response Agencies by Respondent. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Consent Order, subject to Paragraph Nos. 43-48. Nothing herein shall be interpreted as limiting or affecting the Response Agencies' right of entry or inspection authority under federal law or state law. All individuals with access to Operable Unit 1 under this paragraph shall comply with all approved health and safety plans.

XIII. COMPLIANCE WITH APPLICABLE LAWS

51. Respondent shall perform all Work under this Consent Order in compliance with applicable federal, state and local laws, ordinances, or regulations. In the event a conflict arises between these laws, ordinances, or regulations, Respondent shall comply with the more stringent law, ordinance, or regulation, unless otherwise approved by EPA.

52. Respondent shall be responsible for obtaining state and local permits necessary for the performance of any off-site work, and for complying with the substantive provisions of state and local permit regulations for any on-site work. The standards and provisions of Section XVI (Force Majeure) shall govern delays in obtaining such permits. The Response

Agencies shall cooperate with Respondent and endeavor to expedite the issuance of permits for off-site work within their respective jurisdictions.

XIV. FUTURE RESPONSE COSTS

53. Liability for Future Response Costs. If a Consent Decree addressing Remedial Action in OUI is not entered by the U.S. District Court for the Eastern District of Wisconsin (the "Court") within one year of the Effective Date or such additional time as agreed by the Parties in writing, Respondent shall be liable for Future Response Costs (as defined in this Consent Order) and Respondent shall make direct payments to EPA and the State for any Future Response Costs incurred by the United States or the State, to the extent such costs are not inconsistent with the National Contingency Plan. If, however, the Court does enter such a Consent Decree within one year of the Effective Date (or such additional time as agreed by the Parties in writing), this Section shall be deemed null and void.

54. Payment of Future Response Costs.

a. Payments to EPA. On a periodic basis, the United States will send Respondent a bill requiring payment that includes an EPA cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ cost summary, which reflects costs incurred by DOJ and its contractors, if any. Respondent shall make all payments within forty-five (45) days of Respondent's receipt of each bill requiring payment, except as otherwise provided by Paragraph 55.

b. Payments to the State. On a periodic basis, the State will send Respondent a bill requiring payment that includes a WDNR cost summary, which includes direct and indirect costs incurred by WDNR and its contractors, and a WDOJ cost summary, which reflects costs incurred by WDOJ and its contractors, if any. Respondent shall make all payments within forty-five (45) days of Respondent's receipt of each bill requiring payment, except as otherwise provided by Paragraph 55.

55. Disputes Regarding Future Response Costs. Respondent may contest payment of any Future Response Costs under Paragraph 54 if it determines that the United States or the State has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Notice of any such objection shall be made in writing within forty-five (45) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or to the State (if the State's accounting is being disputed) pursuant to Section XXV (Notices and Submissions). Any such notice of objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, all uncontested Future Response Costs shall immediately be paid to the United States or the State in the manner described in Paragraph 56. Upon submitting a notice of objection, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If the United States or the State prevails in the dispute, within ten (10) days of the resolution of the dispute, all sums due (with accrued interest) shall be paid to EPA (if the United States' cost are disputed) or to the State (if the State's costs are disputed) in the manner described in Paragraph 56. If Respondent prevails concerning any aspect of the contested costs, the portion of the costs (plus associated accrued interest) for which they did not prevail shall be

disbursed to EPA or the State, as appropriate, in the manner described in Paragraph 56; and the amount that was successfully contested need not be paid to EPA or to the State. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding reimbursement of the United States and the State for their Future Response Costs.

56. Payment Instructions.

a. Payments to EPA. All payments to EPA under this Section or under Section XVII (Stipulated Penalties) shall: (1) be made by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund;" (2) reference the Lower Fox River and Green Bay Site, EPA Site/Spill ID Number A565, and DOJ Case Number 90-11-2-1045/2; (3) indicate that the payment is being made pursuant to this Consent Order with WTM I Company; and (4) be sent to:

U.S. Environmental Protection Agency, Region 5
Program Accounting and Analysis Branch
P.O. Box 70753
Chicago, IL 60673

At the time of payment, Respondent shall ensure that notice that payment has been made is sent to DOJ and EPA in accordance with Section XXV (Notices and Submissions) and to:

Financial Management Officer
U.S. Environmental Protection Agency, Region 5
Mail Code MF-10J
77 W. Jackson Blvd.
Chicago, IL 60604

b. Payments to the State. All payments to the State under this Section or under Section XVII (Stipulated Penalties) shall: (1) be made by a certified or cashier's check or checks made payable to "Wisconsin Department of Natural Resources;" (2) reference the Lower Fox River and Green Bay Site; (3) indicate that the payment is being made pursuant to this Consent Order with WTM I Company; and (4) be sent to:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921
(Regular Mail)

101 S. Webster St.
Madison, WI 53703
(Over-Night Mail)

At the time of payment, Respondent shall ensure that notice that payment has been made is sent to the State in accordance with Section XXV (Notices and Submissions).

XV. DISPUTE RESOLUTION

57. The parties to this Consent Order shall attempt to resolve, expeditiously, informally, and in good faith, any disagreements concerning this Consent Order.

58. Any disputes concerning activities or deliverables required under this Consent Order for which Dispute Resolution has been expressly provided for, shall be resolved as follows: Respondent shall notify the Response Agencies in writing of its objection(s) within fourteen (14) calendar days of such action, unless the objection(s) has (have) been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies. The Response Agencies shall submit their Statement of Position, including supporting documentation, no later than fourteen (14) calendar days after receipt of Respondent's written notice of dispute. Respondent may submit a response to the Response Agencies' Statement of Position within five (5) business days after receipt of the Statement. During the five (5) business days following receipt of the Response Agencies' Statement of Position, the parties shall attempt to negotiate, in good faith, a resolution of their differences. The time periods for exchange of written documents may be extended by agreement of all parties.

59. An administrative record of any dispute under this Section shall be maintained by EPA and shall contain the notice of objections and accompanying materials, the Statement of Position, any other correspondence between the Response Agencies and Respondent regarding the dispute, and all supporting documentation. The administrative record shall be available for inspection by all parties. If the Response Agencies do not concur with the position of Respondent, the Division Director for the Office of Superfund, EPA Region V, in consultation with the Secretary of the WDNR, shall resolve the dispute based upon the administrative record and consistent with the terms and objectives of this Consent Order, and shall provide written notification of such resolution to Respondent.

60. Respondent's obligations under this Consent Order, other than the obligations affected by the dispute, shall not be tolled by submission of any objection for dispute resolution under this Section. Elements of Work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Statement of Work. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVI. FORCE MAJEURE

61. Respondent agrees to perform all requirements under this Consent Order within the time limits established under this Consent Order, unless the performance is delayed by a *force majeure*. For purposes of this Consent Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Consent Order despite Respondent's best efforts to

fulfill the obligation. *Force majeure* does not include financial inability to complete the response actions or increased cost of performance.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a *force majeure* event, Respondent shall notify the Response Agencies orally within seven (7) business days of when Respondent first knew that the event might cause a delay. Within fourteen (14) calendar days thereafter, Respondent shall provide to the Response Agencies in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in Respondent's opinion, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

63. If EPA, following consultation with the State, agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Consent Order that are affected by the *force majeure* event will be extended by the Response Agencies for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA, following consultation with the State, does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA, following consultation with the State, agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVII. STIPULATED PENALTIES

64. Respondent shall be liable for payment into the Hazardous Substances Superfund administered by EPA of the sums set forth below as stipulated penalties for each week or part thereof that Respondent fails to comply with a work schedule or payment schedule in accordance with the requirements contained in this Consent Order, unless the Response Agencies determine that such a failure or delay is attributable to *force majeure* as defined in Section XVI or is otherwise approved by EPA. Such sums shall be due and payable within thirty (30) days of receipt of written notification from EPA specifically identifying the noncompliance and assessing penalties, unless Respondent invokes the procedures of Section XV (Dispute Resolution). For failure to submit the final RD Work Plan on schedule, stipulated penalties shall accrue in the amount of \$1,000 per day for the first 7 days and \$2,500 per day for each day thereafter. Stipulated penalties for all other matters shall accrue in the amount of \$1,000.00 for the first week or part thereof, and \$1,500.00 for each week or part thereof thereafter. Stipulated penalties shall begin to accrue on the day that performance is due or a violation occurs and extends through the period of correction.

65. The stipulated penalties set forth herein shall not preclude the Agencies from electing to pursue any other remedy or sanction because of Respondent's failure to comply with any of the terms of this Consent Order, including a suit to enforce the terms of this Consent Order. Said stipulated penalties shall not preclude the EPA from seeking statutory penalties up to the amount authorized by law if Respondent fails to comply with any requirements of this Consent Order. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Consent Order.

66. Upon receipt of written demand from EPA, Respondent shall make payment to EPA within thirty (30) days and interest shall accrue on late payments. Payments shall be made in accordance with instructions provided by EPA in the written demand. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest.

67. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of any work required under this Consent Order. Stipulated penalties shall accrue during any dispute resolution period concerning the particular penalties at issue, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision. If Respondent prevails upon resolution, Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section.

XVIII. COVENANT NOT TO SUE BY EPA

68. In consideration of the actions that will be performed under the terms of this Consent Order, and except as otherwise specifically provided in this Consent Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Consent Order. This covenant not to sue extends only to Respondent and does not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA AND WDNR

69. Except as specifically provided in this Consent Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or WDNR from seeking legal or equitable relief to enforce the terms of this Consent Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

70. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. EPA and WDNR reserve, and this Consent Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Consent Order;
- b. liability for past or future response costs incurred or paid by the United States or the State for OU1 or for the Site (except for any Future Response Costs paid pursuant to this Consent Order);
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by EPA for costs of the Agency for Toxic Substances and Disease Registry related to the Site.

71. Work Takeover. In the event EPA, in consultation with WDNR, determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or WDNR may assume the performance of all or any portion of the Work as the Response Agencies determine necessary. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph shall be considered Future Response Costs. In accordance with Paragraph 53 (Liability for Future Response Costs), Respondent may be required to reimburse the United States and the State for all such Future Response Costs. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Consent Order, EPA and WDNR retain all authority and reserve all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY RESPONDENT

72. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Work or this Consent Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111,

112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work, including any claim under the United States Constitution, the Constitution of the State of Wisconsin, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work.

73. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 70(b), (c), and (e) – (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

74. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. OTHER CLAIMS

75. Respondent waives all claims or demands for compensation under Sections 106, 111 and 112 of CERCLA, 42 U.S.C. §§ 9606, 9611 and 9612 against the United States or the Hazardous Substances Superfund established by Section 9507 of Title 26 of the United States Code arising from activity performed pursuant to this Consent Order. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims against the Response Agencies, including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of the Work.

76. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from Operable Unit 1.

77. Respondent specifically reserves all rights and defenses that it may have, including but not limited to any rights to contest any Findings of Fact and Conclusions of Law and Determinations set forth in Sections V and VI of this Consent Order in any proceeding other than an action brought by EPA or the State to enforce this Consent Order. Under this Consent Order, Respondent specifically reserves any right it may have to seek review of the remedial action selected in the ROD as authorized by CERCLA Section 113(h), 42 U.S.C. § 9613(h), other than in an action brought by EPA or the State to enforce this Consent Order.

78. Each party to this Consent Order shall bear its own costs and attorneys fees.

XXII. CONTRIBUTION PROTECTION AND EFFECT OF SETTLEMENT

79. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are the Work. Nothing in this Consent Order precludes the United States, the State, or Respondent from asserting any claims, causes of action, or demands against any person not parties to this Consent Order for indemnification, contribution, or cost recovery.

80. The Parties agree and acknowledge that the Response Agencies shall recognize that Respondent is entitled to full credit for all response costs incurred in performance of the Remedial Design and all future response costs paid under this Consent Order, with such credit to be applied against Respondent's liabilities for response costs at the Site; provided, however, that the credit ultimately recognized shall take into account the amount of any recoveries by Respondent of any portion of such payments from other liable persons such as through a recovery under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 96707 and 9613.

XXIII. INDEMNIFICATION

81. Respondent shall indemnify, save and hold harmless the United States, the State, and their officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Consent Order. In addition, Respondent agrees to pay the United States and/or the State all costs incurred by the United States and/or the State, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States and/or the State based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Order. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Consent Order. Neither Respondent nor any such contractor shall be considered an agent of the United States or the State.

82. The United States and/or the State shall give Respondent notice of any claim for which the United States and/or the State plan to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

83. Respondent waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States and/or the State, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between Respondent and any person for performance of response actions on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. RECORD PRESERVATION

84. Respondent shall preserve all records and documents which relate to implementation of the RD at Operable Unit 1 for a minimum of ten (10) years following completion of Remedial Action construction. Respondent shall acquire and retain copies of all documents that relate to Remedial Design for Operable Unit 1 and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondent shall notify the Response Agencies at least ninety (90) days before the documents are scheduled to be destroyed. If EPA or WDNR request that the documents be saved, Respondent shall, at no cost to the Response Agencies, give the Response Agencies the documents or copies of the documents.

XXV. NOTICES AND SUBMISSIONS

85. Documents, including but not limited to reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Order, shall be sent by overnight delivery or certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent, EPA, and WDNR designate in writing:

As to the United States:

James Hahnenberg
EPA Project Coordinator
United States Environmental Protection Agency
77 West Jackson Blvd., mail code: SR-6J
Chicago, Illinois 60604-3590
Phone: (312) 353-4213
FAX: (312) 886-4071
E-mail: Hahnenberg.James@epa.gov

with a copy to:

Roger Grimes (C-14J)
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Phone: (312) 886-6595
FAX: (312) 886-0747
E-mail: grimes.roger@epa.gov

As to the State:

Gregory Hill
WDNR Project Coordinator
Wisconsin Department of Natural Resources

P.O. Box 7921
Madison, WI 53707-7921
(Regular Mail)
Phone: (608) 267-9352
FAX: (608) 267-2800
E-mail: hillg@dnr.state.wi.us

101 S. Webster St.
Madison, WI 53703
(Over-Night Mail)

As to the Respondent:

J.P. Causey Jr.
Vice President & Secretary / WTM I Company
c/o Chesapeake Corporation
1021 E. Cary Street
Box 2350
Richmond, VA 23218-2350
Phone: (804) 697-1166
FAX: (804) 697-1192
E-mail: jp.causey@cskcorp.com

with a copy to:

Nancy K. Peterson
Quarles & Brady LLP
411 E. Wisconsin Ave.
Milwaukee, WI 53202-4497
Phone: (414) 277-5515
Fax: (414) 203-0190
E-mail: nkp@quarles.com

XXVI. EFFECTIVE DATE OF CONSENT ORDER

86. This Consent Order shall become effective upon receipt by Respondent of the Consent Order signed by the Director of the Superfund Division, EPA, Region 5 and the Secretary of the WDNR.

XXVII. COMMUNITY RELATIONS

87. Respondent shall cooperate with the Response Agencies in providing RD information to the public. If requested by the Response Agencies, Respondent shall participate in the preparation of all RD information disseminated to the public pertaining to Operable Unit 1.

XXVIII. MODIFICATION OF CONSENT ORDER

88. In addition to the procedures set forth in Section VIII (Project Coordinators), Section IX (Work to be Performed), Section XV (Dispute Resolution) and Section XVI (Force Majeure), this Consent Order may be amended by mutual agreement of the Parties. Amendments shall be in writing and shall become effective on the date of execution by the Response Agencies. Project Coordinators do not have the authority to sign amendments to the Consent Order.

89. No informal advice, guidance, suggestions, or comments by the Response Agencies regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by the Response Agencies, incorporated into this Consent Order.

XXIX. NOTICE OF COMPLETION

90. At the request of Respondent, the Response Agencies shall promptly determine whether all actions have been performed in accordance with this Consent Order, except for certain continuing obligations required by this Consent Order (e.g., record retention). Any request shall demonstrate in writing that such actions have been performed in accordance with this Consent Order and shall be accompanied by the following attestation by a responsible official for the Respondent: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." Upon such determination by the Response Agencies, the Response Agencies will promptly provide written notice to Respondent. Such notice will not be unreasonably withheld. If the Response Agencies determine that any required response activities have not been completed in accordance with this Consent Order, they will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

IN THE MATTER OF:
Administrative Order by Consent

Lower Fox River and Green Bay Site

AGREED AS STATED ABOVE:

WTM I Company
(f/k/a Wisconsin Tissue Mills Inc.)

BY: _____

Name: J.P. Causey Jr.
Title: Vice President

DATE: June 23, 2003

IN THE MATTER OF:

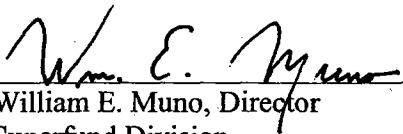
Administrative Order by Consent

Lower Fox River and Green Bay Site

IT IS SO ORDERED AND AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY:


William E. Muno, Director
Superfund Division
U.S. Environmental Protection Agency

DATE:

7/1/03

Region 5

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

BY:


Scott Hassett, Secretary

DATE:

6/23/03

**STATEMENT OF WORK
FOR THE REMEDIAL DESIGN FOR**

OPERABLE UNIT 1 AT THE

LOWER FOX RIVER AND GREEN BAY SITE

BROWN, OUTAGAMIE, AND WINNEBAGO COUNTIES, WISCONSIN

I. PURPOSE

This Statement of Work (SOW) sets forth the requirements for the Remedial Design (RD) for all components of the remedial action set forth in the Record of Decision (ROD) for Operable Unit 1 (OU1) of the Lower Fox River and Green Bay Site (Site).¹ This ROD encompasses Operable Unit 1 and Operable Unit 2 and was signed by the Deputy Administrator, Water Division, Wisconsin Department of Natural Resources (WDNR) and the Superfund Director of EPA Region 5 on December 18, 2002 and December 20, 2002, respectively.² This SOW addresses only the Remedial Design for OU1. The Respondent shall develop the Remedial Design consistent with the ROD, the Consent Order to which this SOW is attached (AOC), EPA Superfund Remedial Design and Remedial Action Guidance, and any additional guidance provided by the Response Agencies in submitting deliverables for designing a remedial action for the Site. This SOW does not include implementation of the remedy.

II. DESCRIPTION OF THE REMEDIAL ACTION / PERFORMANCE STANDARDS

The Respondent shall design the remedy necessary to meet the Performance Standards and specifications set forth in the ROD for OU1, as discussed below (Alternative C2). The Remedial Design shall address the timing and sequencing of the remedial action to account for the multifaceted and multi-year components of the remedy.

Appropriate consideration of the provisions of the contingent ROD, and such other work as proposed by Respondent under the AOC, may also be incorporated into the Remedial Design process.

¹ "Operable Unit 1" or "OU1" shall mean the Little Lake Butte des Morts reach of the Lower Fox River, as delineated by the Record of Decision signed by WDNR and EPA in December 2002. More specifically, OU1 is the portion of the Lower Fox River (and the underlying River sediment) starting at the outlet of Lake Winnebago at the Neenah Dam and the Menasha Dam downstream to the Upper Appleton Dam, including sediment deposits A through H and POG. As so defined, OU1 is depicted in Figure 7-9 of the December 2002 Final Feasibility Study, a copy of which is attached to the Consent Order as Attachment B.

² Operable Units 3, 4, and 5 of the Lower Fox River and Green Bay Site will be addressed in a separate Record of Decision.

OPERABLE UNIT 1 – LITTLE LAKE BUTTE DES MORTS, ALTERNATIVE C2 - Alternative C2 includes the removal of sediment with PCB concentrations greater than the 1 ppm remedial action level (RAL), followed by dewatering and off-site disposal of the sediment

- **Site Mobilization and Preparation.** The staging area for OU1 will be determined during the design stage. Site preparation at the staging area will include collecting soil samples, securing the onshore property area for equipment staging, and constructing the sediment dewatering facility, water treatment facilities, and sediment storage and truck loading areas
- **Sediment Removal.** Sediment removal will be conducted using a dredge (e.g., cutterhead or horizontal auger or other method) or other suitable sediment removal equipment.
- **Sediment Dewatering.** Sediment that is removed will require dewatering.
- **Water Treatment.** Unless other arrangements can be made, water treatment will consist of flocculation, clarification, sand filtration, and treatment through activated carbon filters.
- **Sediment Disposal.** Sediment disposal includes the loading and transportation of the sediment to an NR 500 landfill with Toxic Substances Control Act (TSCA) approval, if needed.
- **Demobilization and Site Restoration.** Demobilization and site restoration will involve removing all equipment from the staging and work areas and restoring the site to, at a minimum, its original condition before construction of the staging area commenced.
- **Institutional Controls and Monitoring.** Baseline monitoring will include pre- and post-remedial sampling of water, sediment, and biological tissue. Monitoring during implementation will include air and surface water sampling. Plans for monitoring during and after construction will be developed during the Remedial Design and modified during and after construction, as appropriate. Institutional controls may include access restrictions, land use or water use restrictions, dredging moratoriums, fish consumption advisories, and domestic water supply restrictions. Land and water use restrictions and access restrictions may require local or state legislative action to prevent inappropriate use or development of contaminated areas.

- **Achievement of Remedial Action Level Objective.** The mass and volume to be remediated will be determined by (1) establishing a dredge elevation based on a RAL of 1 ppm or, if sampling conducted after dredging is completed shows that the 1 ppm RAL has not been achieved, (2) by achieving a Surface Weighted Average Concentration (SWAC) of 0.25 ppm.³

III. SCOPE OF REMEDIAL DESIGN

The Remedial Design shall be consistent with the ROD for OU1. Specific tasks are described below.

Task 1: Remedial Design Work Plan

Within 60 days of receiving Notice of Authorization to proceed with Remedial Design, Respondent shall submit a complete Remedial Design Work Plan (RD Work Plan) to EPA and WDNR for their review and approval. The RD Work Plan shall discuss how each component of the OU1 remedy will be addressed, identify tasks necessary for completing the pre-design investigations and design work required by the ROD for OU1, and provide an overall management strategy for completion of such tasks. The RD Work Plan shall also include a project schedule for each major activity and submission of deliverables to be generated during the Remedial Design. The plan shall document the responsibility and authority of all organizations and key personnel involved with the design and shall include a description of qualifications of key personnel directing the Remedial Design, including contractor personnel.

Respondent shall submit the RD Work Plan in accordance with Section X of the Consent Order and Section IV of this SOW. Once EPA and WDNR approve the RD Work Plan, Respondent shall implement the plan in accordance with the approved schedule therein.

Task 2: Pre-Design Phase

On or before July 21, 2003, Respondent shall submit a Pre-design Sampling Plan for OU1 to WDNR and EPA for their review and approval. Among other things, the Pre-design Sampling Plan will describe necessary field and analytical evaluations of sediment in OU1 required for completion of the Remedial Design. The Pre-design Sampling Plan will consist of the Quality Assurance Project Plan, Sampling and Analysis Plan, and Health and Safety Plan. The Plan will not address baseline bathymetric and related surveys, which have been or will be

³ The Parties recognize that an Explanation of Significant Differences or ROD Amendment issued by the Response Agencies could result in an alternative RAL or SWAC.

performed by WDNR and/or EPA. Respondent shall submit any necessary modifications to these documents for review and approval prior to implementing the pre-design investigation.

Validated sample results shall be submitted in accordance with provisions in Section X of the AOC. Following completion of sampling and validation of data, Respondent shall submit a Basis of Design Report for approval by the Response Agencies which shall include all information collected during the pre-design investigation, as well as appropriate literature and design references. The Basis of Design report shall include the basis for designation of specific sediment deposits in OU1 for remediation. The designation of sediment deposits for removal will be subject to approval by the Response Agencies and be consistent with the Record of Decision for OU1. Presentation of alternative remedial measures may be made for Response Agencies' approval under the provisions of the contingent ROD.

Task 3: Remedial Design Phases

Following completion of the Pre-Design Phase, Respondent shall prepare construction plans and specifications to implement the Remedial Action at OU1 as described in the ROD and this SOW. Such plans and specifications shall be submitted in accordance with the schedule set forth in Section IV below. Subject to approval by EPA and WDNR, Respondent may submit more than one set of design submittals reflecting different components of the Remedial Action. All design plans and specifications shall be developed consistent with EPA's Superfund Remedial Design and Remedial Action Guidance (OSWER Directive No. 9355.0-4A), except as otherwise specified in this SOW, and shall demonstrate that the Remedial Action based on the final Remedial Design will meet all Performance Standards. Respondent shall meet regularly with EPA and WDNR to discuss design issues.

If Respondent, consistent with the ROD capping contingency, proposes to leave any capped area in place as part of the final remedy either based on recharacterization and/or other information, Respondent shall provide a detailed submittal with technical justification supporting such a proposal to WDNR and EPA for review and approval. This submittal shall be consistent with ROD Sections 13.4 and 13.5 and all appropriate EPA Guidance, and in accordance with a schedule established in the approved RD Work Plan.

If Respondent, based on investigation activities and assessments conducted during the design phase, proposes that alternative remedial measures be designated by the Response Agencies for any portion of OU1, Respondent shall provide a detailed submittal with technical justification supporting such a proposal to WDNR and EPA for review

and approval. The submittal shall be consistent with all appropriate EPA Guidance. Approval of the proposal will require either an Explanation of Significant Differences or a ROD Amendment by EPA and WDNR before it becomes effective. The submittal shall be in addition to all other submittals required by this SOW, and shall not delay the submittal of other design documents. Respondent may make a submittal proposing alternate remedial measures, and EPA and WDNR will consider the submittal, either during design or after the Final Design is completed, but before remedial action commences in the portion(s) of OU1 addressed by the submittal.

A. Preliminary Design (50%)

Respondent shall submit the Preliminary Design for OU1 to EPA and WDNR for review and approval when the design effort is approximately 50% complete. The Preliminary Design submittal shall include or discuss, at a minimum, the following:

- Preliminary plans, drawings, and sketches, including design calculations;
- Results of studies and additional field sampling and analysis, if any, conducted after the Pre-Design Phase;
- Design assumptions and parameters, including design restrictions, process performance criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume), as applicable;
- Sediment Removal Verification Plan (in appropriate phase), including the proposed cleanup verification methods (i.e., probing methods) and compliance with Applicable or Relevant and Appropriate Requirements (ARARs);
- Outline of required specifications;
- Proposed siting/locations of processes/construction activity;
- Mitigation Plan to restore habitats that have been physically impacted by sediment removal equipment or soil excavation equipment (not including the soft sediment deposits themselves);
- Expected long-term monitoring and operation requirements;
- Real estate, easement, and permit requirements;

- Preliminary construction schedule, including contracting strategy.

B. Pre-Final Design (90%)

The Respondent shall submit the Pre-Final Design when the design effort is 90% complete. The Pre-Final Design shall fully incorporate all Response Agency comments made to the Preliminary Design.

The Pre-Final Design submittals shall include those elements listed for the Preliminary Design, as well as the following:

- Draft Construction Quality Assurance Project Plan;
- Final Health and Safety Plan;
- Final Contingency Plan;
- Final Sediment Removal Verification Plan;
- Draft Operation and Maintenance Plan;
- Capital and Operation and Maintenance Cost Estimate. This cost estimate shall refine the Feasibility Study cost estimate to reflect the detail presented in the Pre-Final Design;
- Final Project Schedule for the construction and implementation of the Remedial Action addressed in this SOW which identifies timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones. Specific dates will assume and be dependant upon, a defined start date.

C. Final Design (100%)

The Respondent shall submit the Final Design when the design effort is 100% complete. The Final Design shall fully incorporate all Response Agency comments made to the Pre-Final Design and shall include reproducible drawings and specifications suitable for bid advertisement. The Final Design submittals shall include those elements listed for the Pre-Final Design.

D. Content of Supporting Plans

1. Health and Safety Plan (HSP)

Respondent shall develop and submit to EPA / WDNR for review and comment a site-specific HSP which is designed to protect construction personnel and area residents from physical, chemical, and other hazards posed by any work at the Site during the RA. The Health and Safety Plan shall follow OSHA requirements as outlined in 29 CFR §§ 1910 and 1926.

2. Contingency Plan

Consistent with the Consent Order, Respondent shall develop and submit to EPA / WDNR for approval a Contingency Plan that describes the mitigation procedures it will use in the event of an accident or emergency at the Site. The Contingency Plan may be incorporated into the HSP. The final Contingency Plan shall be submitted prior to the start of construction, in accordance with the approved construction schedule. The Contingency Plan shall include, at a minimum, the following:

- a. Name of the person or entity responsible for responding in the event of an emergency incident;
- b. Plan and date to meet with the local community, including local, State and Federal agencies involved in the Remedial Action, as well as local emergency squads and hospitals; and,
- c. First aid medical information

3. Construction Quality Assurance Project Plan (CQAPP)

Respondent shall develop and submit to EPA / WDNR for review and approval a draft CQAPP which describes the site specific components of the quality assurance program that the Respondent shall use to ensure that the completed project meets or exceeds all design criteria, plans, and specifications. The final CQAPP shall be submitted in accordance with the approved RA Work Plan schedule. The CQAPP shall contain, at a minimum, the following elements:

- a. Responsibilities and authorities of all organizations and key personnel involved in the construction of the Remedial Action.

- b. Qualifications of the Quality Assurance Official to demonstrate that he/she possesses the training and experience necessary to fulfill his/her identified responsibilities.
- c. Protocols for sampling and testing used to monitor the remedial action.
- d. Identification of proposed quality assurance sampling activities including the sample size, locations, frequency of testing, acceptance and rejection data sheets, problem identification and corrective measures reports, evaluation reports, acceptance reports, and final documentation.
- e. Reporting requirements for CQAPP activities shall be described in detail in the CQAPP. This shall include such items as daily summary reports, inspection data sheets, problem identification and corrective measures reports, and design acceptance reports, and final documentation. Provisions for the final storage of all OU1 cleanup records shall be presented in the CQAPP.

4. Sediment Removal Verification Plan

Respondent shall develop and submit a Sediment Removal Verification Plan to EPA / WDNR for review and approval. The purpose of the Sediment Removal Verification Plan is to provide a mechanism to ensure that Performance Standards for the Remedial Action are met. Once approved, the Sediment Removal Verification Plan shall be implemented on the approved schedule. The Sediment Removal Verification Plan shall include, at a minimum:

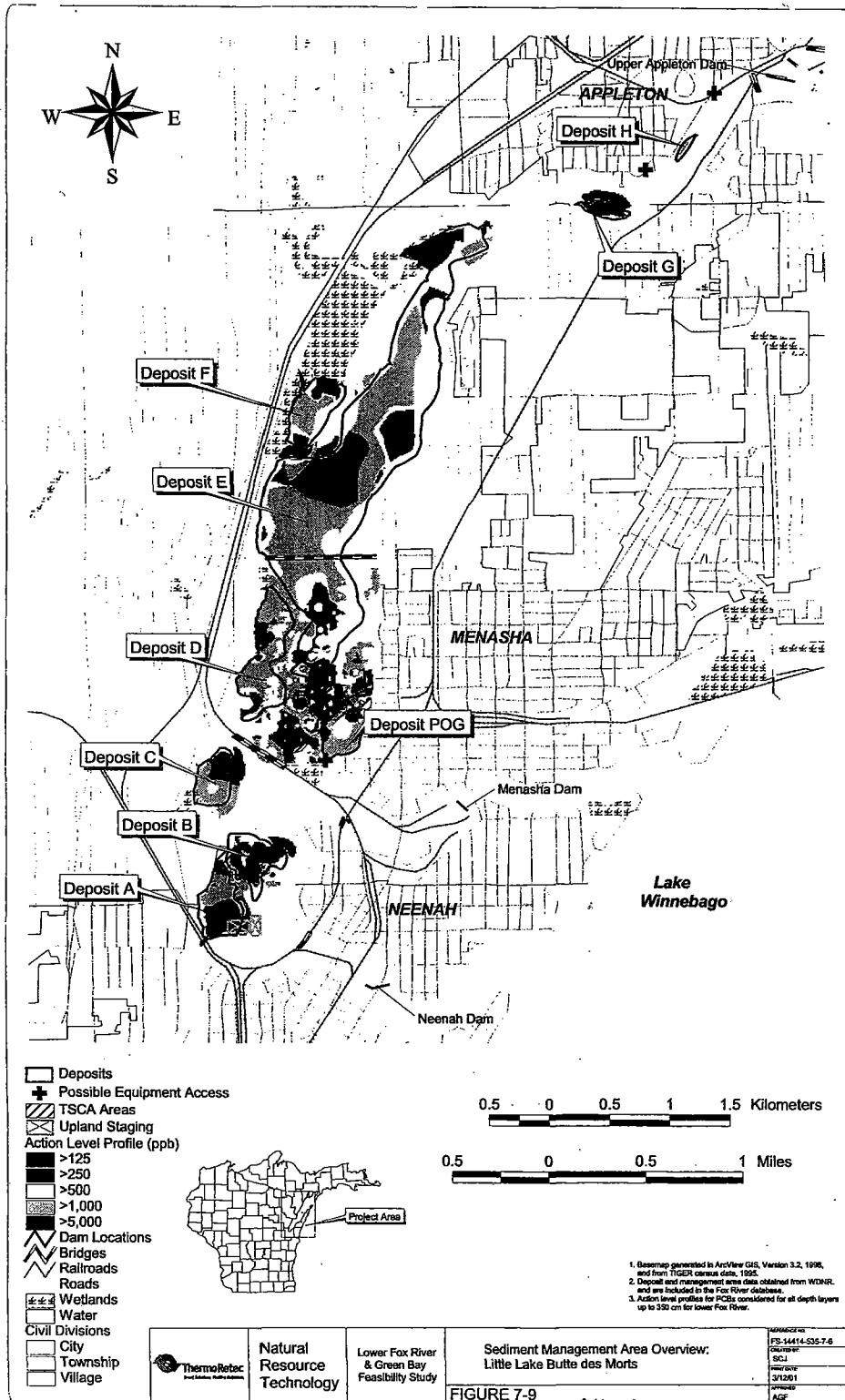
- a. Quality Assurance Project Plan (may be part of RA QAPP);
- b. Health and Safety Plan (may be part of RA HSP); and
- c. Field Sampling Plan.

IV. SUMMARY OF MAJOR DELIVERABLES / SCHEDULE

A summary of the project schedule and reporting requirements for each phase of the OU1 Remedial Action contained in this OU1 RD SOW is presented below. The draft Pre-design Sampling Plan will sequence the work so that samples are first collected and analyzed from Deposit A/B. The portion of the design necessary to commence construction of the remedial action in 2004 will be expedited on a schedule to be specified in the RD Work Plan.

Unless modified by the final RD Work Plan or otherwise approved in writing by the Project Coordinators, the project schedule will be as follows:

<u>Deliverable / Milestone</u>	<u>Due Date (calendar days)</u>
Draft Pre-design Sampling Plan	July 21, 2003
Draft RD Work Plan	Sixty (60) days after receiving Notice of Authorization to proceed with RD.
Final RD Work Plan	Thirty (30) days after the receipt of comments.
Monthly Progress Reports	As described in the Consent Order and SOW.
Pre-design Sampling	Initiate within thirty (30) days after receipt of Notice of Authorization to proceed with pre-design investigation approved in Pre-design Sampling Plan, but no earlier than August 4, 2003.
Basis of Design Report	Ninety (90) days after receipt of validated data from the pre-design investigation.
Preliminary Design (50%)	One hundred and eighty (180) days after receipt of validated data from the pre-design investigation or sixty (60) days after approval of the Basis of Design, whichever is later..
Pre-Final Design (90%)	Ninety (90) days after receipt of comments from EPA and WDNR on the Preliminary Design for that phase.
Final Design (100%)	Thirty (30) days after receipt of comments from EPA and WDNR on the Pre-Final Design for that phase.



Consent Decree Appendix G
Map of Operable Unit 1

